

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Southern Star Central Pipeline, Inc.
Pioneer Natural Resources, Inc.

Docket Nos. RP98-52-052
and SA98-33-001

ORDER DENYING MOTION FOR STAY
AND GRANTING EXTENSION OF TIME

(Issued April 27, 2004)

1. This order denies the motion filed by Pioneer Natural Resources USA, Inc. (Pioneer) for a stay of the Commission's March 30, 2004 Order (March 30 Order)¹ that required Pioneer to pay Kansas ad valorem tax refunds to Southern Star Central Gas Pipeline, Inc. (Southern Star) within 30 days.
2. Pioneer states that it intends to file a timely request for rehearing, and requests a stay of the requirement until that Order is a final Commission order, no longer subject to rehearing or appeal. In the alternative, Pioneer requests an extension of the due date for payment of such refunds until 75 days after the Commission acts on all requests for rehearing of the March 2004 Order, which will enable Pioneer to seek a stay from a court.
3. Two parties filed in opposition to the motion asserting that Pioneer has not established a basis for issuing a stay, or for an extension of time.² We deny the motion for a stay since Pioneer's arguments are not sufficient to overcome the Commission's policy against staying Commission refund orders pending judicial review, but will grant Pioneer an extension of 15 days after Commission action on rehearing for payment of the refund.

¹ 106 FERC ¶ 61,316 (2004).

² Missouri Public Service Commission and City Utilities of Springfield jointly, and Missouri Gas Energy, filed answers opposing Pioneer's request.

Background

4. At issue is the refund liability of Pioneer for Kansas ad valorem tax reimbursements paid to Pioneer's predecessors by Williams Gas Pipelines Central, Inc. (predecessor to Southern Star and successor to Williams Natural Gas Company). Pioneer states that the refund claim against Pioneer as of March 31, 2003 is \$10,059,306, which amount Pioneer paid into an escrow account pending a Commission determination on Pioneer's refund obligation. Since Pioneer disputed that amount, the Commission set the matter for hearing.³ In a decision issued December 1, 2003, the Presiding Administrative Law Judge (ALJ) rejected all of Pioneer's arguments, and required Pioneer to make refunds of the tax reimbursements received from Southern Star.⁴

5. The March 30 Order affirmed the ALJ on all issues except it held that the escrow fund interest rate would apply to refunds not the FERC interest rate. Ordering Paragraph (B) required Pioneer to make such refunds within 30 days of the Order – i.e., by April 29, 2004.

6. Pioneer states that it understands that when Southern Star receives the refunds from Pioneer it will promptly flow through the refund to its customers. Pioneer requests that the Commission act on this Motion by April 27 so if the Commission denies the motion Pioneer can make all necessary arrangements to meet the refund deadline of April 29, 2004.

Discussion

7. The Commission generally denies requests for stays of its refund orders pending judicial review "because either the Commission or the court may provide a remedy to recover refunded amounts in the event the Commission is reversed on appeal."⁵ The Commission has denied similar requests in a number of cases involving Kansas ad valorem tax refunds,⁶ and there is nothing in Pioneer's motion that is sufficient to justify granting an exception to the Commission's policy. In those cases the Commission explained why there was no merit to the argument, similar to Pioneer's, that it would

³ Williams Gas Pipelines, Central, Inc., 102 FERC ¶ 61,001 (2003).

⁴ 105 FERC ¶ 63,031 (2003).

⁵ Olympic Pipeline Co., 102 FERC ¶ 61,055 at P 16 (2003).

⁶ See Panhandle Eastern Pipe Line Co., 103 FERC ¶ 61,099 (2004), and Northern Natural Gas Co., 82 FERC ¶ 61,195 (1998).

suffer irreparable injury absent a stay because it would be difficult for it to recoup the refunds if it was held either on rehearing, or by a court, that it was not required to pay the refund, and we will not repeat that explanation here. Accordingly, we will deny the motion for a stay which would defer payment of the refund for an indeterminate amount of time pending completion of any judicial review.

8. Pioneer has also requested an extension of the due date for the payment of refunds until 75 days after the Commission acts on rehearing requests of the March 30 Order which would enable it to seek relief from the court. Pioneer argues that the Commission has granted extensions of the refund payment date in a variety of cases, and should grant an extension here.⁷ Here the refunds are in an escrow account, and payment of the refund is assured. The Commission intends to act promptly on any rehearing requests filed in this case. While this matter has continued for a number of years, a slight delay in the payment date will not harm the intended beneficiaries. Accordingly, we will grant an extension of the payment due date but limit it to 15 days after the Commission acts on rehearing requests, since Pioneer can seek relief from the court once there is a final Commission order.

The Commission orders:

(A) Pioneer's motion for a stay is denied.

(B) Pioneer is granted an extension to make payment of the refund ordered until 15 days after there is a final Commission order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁷ Pioneer cites: Northern Pump Co., 49 FERC ¶ 61,045 at 61,205 (1989); Stowers Oil & Gas Co., *et al.*, 44 FERC ¶ 61,416 at 62,333 (1988); Transcontinental Gas Pipe Line Corp., 53 FERC ¶ 61,189 at 61,654 (1990); and United Gas Pipe Line Co., 42 FERC ¶ 61,388 at 62,140 (1988).